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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,808	02/08/2002	Ashok Kumar Shahi	033166-017	8876

7590

01/14/2003

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EXAMINER

HWU, JUNE

ART UNIT	PAPER NUMBER
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1661

DATE MAILED: 01/14/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/067,808

Applicant(s)

SHAHI ET AL.

Examiner

June Hwu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 June 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

The declaration and drawings filed June 10, 2002 have been entered.

Drawings

The disclosure is objected to under 37 CFR 1.165(a) because the Figures 1-5 do not show all the distinctive characteristics of the claimed plant capable of visual representation.

Specifically:

1. The background of Sheet 1, Figures 1-3 contains black dots and the numerals on Figure 2 are less than 0.32 cm (1/8 inch).
2. Figures 4-5 are of poor quality and do not show any of the distinctive characteristics of the plant capable of visual representation.
3. Figures 12-13 are missing. The transmittal form does not indicate Figures 12-13 or Sheet 7 and 8.

Replacement drawings are requested.

The drawings should NOT be sent to the 20231 zip code address for the United States Patent and Trademark Office. Please direct all replies to the United States Patent and Trademark Office via one (1) of the following:

1. Hand carried directly to:

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Sequence Disclosure

This application contains sequence disclosures (Table 4) that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 CFR 1.821 through 1.825 for the reason(s) set forth on the attached Notice To Comply With Requirements For Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosures.

Applicants must comply with the sequence rules in order to effect a complete response to this Office action.

A reply to a notice to comply with the sequence rules should NOT be sent to the 20231 zip code address for the United States Patent and Trademark Office. Please direct all replies to the United States Patent and Trademark Office via one (1) of the following:

1. Electronically submitted through EFS-Bio
(<http://www.uspto.gov/ebs/efs/downloads/documents.htm>), EFS
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3. Mailed by Federal Express, United Parcel Service or other delivery service to:
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Arlington, Virginia 22202

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Title

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: *Cymbopogon* Plant Named 'RLJCC1'.

Objection to the Disclosure

37 CFR 1.163

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

In plant application filed under 35 U.S.C. 161, the requirements of 35 U.S.C. 112 are limited.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164

(reproduced below) are controlling:

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The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 37 CFR 1.163(a) because the specification presents less than a full and complete botanical description and the characteristics which distinguish over related known varieties.

More specifically:

A. The Latin name of the genus, species and variety denomination of the claimed plant should be stated and preceded by the heading set forth in 37 CFR 1.163(c)(4), (c)(5) and (d). See MPEP 1605. Correction by adding such a name is required.

B. Applicants should provide a cultivar name for the instant variety that is not entirely of letters and numerical in nature to better comply with the International Code of Nomenclature for Cultivated Plants - 1980, Article 31A(a.) which states, in part: "It is strongly recommended that, whenever possible, new cultivar names in the following form should be avoided: a. Names composed of abbreviations, numerals or arbitrary sequences of letters except as established custom in a country or for a crop requires."

C. Throughout the specification, claim and abstract the genus and species should be italicized. Correction is necessary.

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D. Page 1, line 33, page 2, line 33, page 4, line 33, page 6, line 34, and page 8, line 11, the page numbers appear to be intermixed with the last sentence of each page. Correction is necessary.

E. Applicants should refer to cultivar names within single quotation marks, as this is the convention employed by the International Code of Botanical Nomenclature.

F. The specification does not "particularly point out where and in what manner the variety of plant has been asexually reproduced". Correction is required.

G. Age and growing conditions of the observed plant should be disclosed in the specification. Correction is required.

H. Applicants should set forth in the specification a brief description how the new variety is distinguished from its parents.

I. Applicants should disclose in the specification that the claimed cultivar is stable and reproduced true to type in successive generations of asexual reproduction.

J. Page 6, lines 19 and 20, the recitation "-1" is unclear. Clarification and/or correction are necessary.

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K. Page 10, lines 23-32, the recitation relative to the description of Fig. 8 and Fig. 9 is identical however the figures are different. Clarification and/or correction are necessary.

L. Page 12, lines 10-12, the recitation relative to the description of Figures 12-13 cannot be compared because Figures 12-13 are missing.

M. Applicants should disclose in the specification as complete as reasonably possible a botanical description of the claimed plant as follow:

1. Average spread of plant;
2. Leaf blade morphology such as shape, apex shape, margin, surface texture (upper and lower sides) and color designation (upper and lower sides) with reference from an employed color chart;
- 3. Leaf sheath length, type, margin, surface texture and color designation with reference from an employed color chart;
4. Culms size, surface texture and color designation with reference from an employed color chart;
- 5. Stem shape and habit;
6. Number of nodes and average length of primary internodes;
7. Ligules size, surface texture, shape and color designation with reference from an employed color chart;
8. Inflorescence type, arrangement, size, time of flowering and color designation with reference from an employed color chart;
9. Spikelet including the pedicel, rachilla, glumes, lemma, awn, palea, lodicules and caryopsis' sizes and color designations, if applicable;

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10. Number, size, color designation, of the anthers, stigma and ovaries;
11. Seed color designation, shape, size, and surface texture, if produced;
12. Root type;
13. Pest and disease resistance/susceptibility.

N. The claim must be drawn to the entire "plant". Applicants should insert the word – plant – after "Cymbopogon". Correction is required.

The above listing may not be complete. Applicants should carefully compare the claimed plant with the botanical descriptions set forth in the specification to ensure completeness and accuracy and to distinguish the plant within this expanding market class. Any further botanical information should be imported into the specification, as should any additional or corrected information relative to same.

Claim Rejection

35 USC § 112, 1st and 2nd Paragraphs

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for reasons set forth in the Objection to the Disclosure Section above.

Comments

Due to the amount of revision seen necessary in this application, it is suggested that Applicant file a substitute specification, incorporating all additions, deletions and modifications so as to provide the printer a clean copy at the time of allowance. Applicant should specifically authorize cancellation of the present specification to the same.

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Future Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to June Hwu whose telephone number is (703) 308-5017. The Examiner can normally be reached Monday through Friday from 6:30 a.m. to 4:00 p.m. and off alternate Mondays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (703) 308-4205. The fax number for the group is (703) 305-3014 or (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service Center whose telephone number is (703) 308-0198.

jh

A handwritten signature in black ink, appearing to read "Bruce Campell", with a stylized, cursive script.

**BRUCE R. CAMPELL, PH.D
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600**